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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. KELLY LYNN GREENE, Defendant and Appellant.	E060409 (Super.Ct.No. SICRF1253273) OPINION

APPEAL from the Superior Court of Inyo County. Brian J. Lamb and Barry Hammer, Judges.* Affirmed.

Alan S. Yockelson, under appointment by the Court of Appeal, for Defendant and Appellant.

* Barry Hammer is a retired judge of the San Luis Obispo Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Anthony DaSilva and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

After the trial court denied her renewed Penal Code section 1538.5 motion to suppress, defendant and appellant Kelly Lynn Greene pled no contest to a charge of possession of methamphetamine for sale. (Health & Saf. Code, § 11378, count 2.) Pursuant to the plea agreement and following the prosecutor's motion, the trial court dismissed the remaining counts. The imposition of defendant's sentence was suspended, and she was placed on probation for 36 months.

On appeal, defendant seeks reversal of her conviction, arguing that the officer's initial stop and resulting search violated her Fourth Amendment rights and that the trial court erred in denying her suppression motion. We conclude, as explained *post*, that the stop and search were reasonable, and we therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 4, 2012, defendant and codefendant[1] were arrested after police found, among other things, a white crystalline substance believed to be methamphetamine, packaging materials, scales, paraphernalia, and a large amount of money in codefendant's car. A few weeks later, the Inyo County District Attorney charged defendant with three felony counts, including possession of methamphetamine for sale. (Health & Saf. Code, § 11378, count 2.) Defendant pled not guilty to the charges. She then brought a motion

[1] Codefendant is not a party to this appeal.

to suppress the evidence obtained during the search pursuant to Penal Code section 1538.5. After a hearing at which the arresting officer testified, the trial court denied the motion. Several months later, defendant brought a renewed suppression motion, which the court also denied after hearing oral argument. Following this denial, as noted, defendant withdrew her not guilty pleas and entered a no contest plea to count 2, possession of methamphetamine for sale. On January 10, 2014, defendant filed a notice of appeal, which was deemed timely under the constructive filing doctrine. (*In re Benoit* (1973) 10 Cal.3d 72, 78, 83-89.)

Defendant argues that both the initial traffic stop and the subsequent search were unlawful. At the hearing on the suppression motion, the prosecution stipulated that the arrest and search were conducted without a warrant. The following facts regarding defendant's encounter with the police are taken from the transcript of that hearing and the transcript of the arresting officer's audio/video recording.[2]

Around 11:00 p.m. on February 4, 2012, a City of Bishop Police officer noticed codefendant's Volkswagen make a right-hand turn about 30 to 40 yards ahead of him without a turn signal. The officer followed the Volkswagen at the same distance and saw it make another right-hand turn without a turn signal. As the car made a third turn, he

[2] For the purpose of deciding the suppression motion, the trial court accepted the parties' stipulation that the transcript of the audio/video recording is an accurate representation of what was said during the traffic stop and search. The accuracy of the transcript is not at issue on appeal.

noticed a "large crack running through the front windshield." At this point, his patrol car was about two to three vehicle lengths behind the Volkswagen.

Based on his belief that codefendant had violated the Vehicle Code by failing to signal and by driving with a crack in the windshield that could impair his vision, the officer stopped the car. He approached the Volkswagen and advised codefendant, who had been driving, that there was a crack in his windshield and that his right blinker was not working. During this exchange, the officer noticed the driver's mirror blinker was on even though the taillight signal was not blinking, which indicated that codefendant had in fact been signaling. As codefendant handed over his license, registration, and proof of insurance, the officer detected "the odor of marijuana emitting from the passenger side window." He based this observation on experience gained in various drug training and in the 75 to 100 traffic stops in which he has smelled marijuana.

After codefendant handed over his documents, the officer asked him to exit the Volkswagen and stand next to his patrol car. He then issued codefendant a citation for a defective windshield and told him that he was "free to go." As codefendant was walking back to his car, the officer called him back to ask him a few questions that he routinely asks during traffic stops.

In response to the officer's questions, codefendant admitted to having a marijuana pipe in the car. Codefendant also stated that he had a "medical card." The officer then asked codefendant if he and defendant had recently smoked marijuana in the car because

he "could smell Mc Donald's [*sic*] and weed when [he] walked up to the window." Codefendant responded that they had not.

The officer informed codefendant that he was going to look inside the car to verify that the marijuana pipe was the only thing he would find. He then asked defendant a similar line of questions regarding the contents of the car. Inside the Volkswagen, the officer found two marijuana pipes and a lockbox that contained marijuana and a large amount of money. In a smaller lockbox he found packaging materials, scales, paraphernalia, and a white crystalline substance believed to be methamphetamine. The officer arrested codefendant and defendant.

After hearing the officer's testimony, the trial court concluded that both the stop and the search were reasonable and denied the motion. First, the court concluded that the officer's belief that codefendant had failed to use a turn signal and his belief that the windshield crack could impair codefendant's driving constituted reasonable bases to initiate a traffic stop. Next, the court found that the officer was experienced and knowledgeable in identifying the odor of marijuana and that "once the vehicle was stopped and [he] contacted the [codefendant]," the officer "identified the odor of marijuana emanating from the car." The court concluded that, under the holding of *People v. Strasburg* (2007) 148 Cal.App.4th 1052 (*Strasburg*), once the officer detected a marijuana odor, he had probable cause to search the car. Finally, the court concluded that the length of the stop was not unlawful because the time between when the officer smelled marijuana and when he began his search (about 15 minutes) was reasonable. At

the hearing on defendant's renewed motion, the court adopted its findings from the previous hearing and denied the motion.

ANALYSIS

1. *Standard of review*

In considering a Penal Code section 1538.5 motion to suppress, the trial court is "vested with the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence and draw factual inferences in deciding whether a search is constitutionally unreasonable." (*People v. Woods* (1999) 21 Cal.4th 668, 673 (*Woods*).) On review, we defer to the trial court's factual findings that are supported by substantial evidence and exercise our independent judgment in determining the constitutional significance of those factual findings. (*Id.* at pp. 673-674; see *Strasburg, supra,* 148 Cal.App.4th at p. 1059.)

2. *The traffic stop*

Defendant argues that there is insufficient evidence to support a finding that the officer had a reasonable suspicion that codefendant had violated Vehicle Code sections 22108 (failure to signal) or 26710 (defective windshield). We disagree.

Under California law, "[a] police officer may legally stop a motorist to conduct a brief investigation when he entertains a rational suspicion, based on specific facts, that a violation of the Vehicle Code or other law may have taken place . . . ." (*People v. Superior Court* (*Simon*) (1972) 7 Cal.3d 186, 200.) When evaluating the legality of a traffic stop, we look at whether there were facts to support a reasonable suspicion of any

potential Vehicle Code violation, even if it is ultimately determined that no violation has occurred. (*Brierton v. Department of Motor Vehicles* (2005) 130 Cal.App.4th 499, 510 (*Brierton*); *People v. Leyba* (1981) 29 Cal.3d 591, 597, superseded by statute on other grounds as stated in *People v. Trujillo* (1990) 217 Cal.App.3d 1219, 1223 [whether a stop is reasonable hinges on whether "the officer either did or did not have that suspicion *at the time he acted*"] (italics added).) If there is substantial evidence to support a finding that the officer had a reasonable suspicion of a potential Vehicle Code violation, we uphold the trial court's finding.

Here, the officer directly observed codefendant make two right turns without signaling. As codefendant made the second right turn, the officer saw a large crack in the windshield from a distance of two or three car lengths. From that testimony the trial court could reasonably infer that the officer entertained a reasonable suspicion that codefendant had violated both Vehicle Code sections 22108 and 26710. Accordingly, we conclude that substantial evidence supports the trial court's reasonable suspicion finding.

Defendant contends that the officer could not have suspected a violation of Vehicle Code section 22108 because no motorists could have been affected by codefendant's perceived failure to signal. Such a violation occurs only when "other motorists may be affected" by a driver's failure to signal. (*People v. Carmona* (2011) 195 Cal.App.4th 1385, 1394 (*Carmona*).) In *Carmona*, the court based its lack of reasonable suspicion holding on the officer's own testimony that defendant's right-hand turn could not have affected his car (he was traveling in the opposite direction and was

still at least 55 feet away) or any other cars (there were none). (*Id.* at pp. 1388, 1394.) Defendant asserts that *Carmona* is dispositive and that there was insufficient evidence to find that other motorists could have been affected by codefendant's failure to signal.

This argument fails because here, unlike in *Carmona*, codefendant's perceived failure to signal could have affected another motorist, namely, the officer. At the hearing, the officer testified that he was driving about 30 to 40 yards behind the Volkswagen when codefendant made both right-hand turns. The trial court concluded that the officer's proximity to the Volkswagen and the fact that he was following behind it (as opposed to, e.g., watching it from across an intersection) "put in issue or impaired the reasonable safety of the officer . . . ." This is a reasonable inference from the officer's testimony and is thus substantial evidence that the officer was affected by defendant's failure to signal.

Defendant claims the officer's safety could not have been at issue because "he observed the signal of the [Volkswagen's] mirror blinker as it turned," and was thus on notice of codefendant's intention to turn right. To the contrary, the transcript of the audio/video recording shows, and the officer testified that, he did not see the mirror blinker working until after he had stopped codefendant. Indeed, the trial court found that the Volkswagen made a right-hand turn in front of the officer "without a visible turn signal . . . that he was able to identify before he stopped the car . . . ." It is legally irrelevant that in actuality codefendant had been using his turn signal. What is relevant is the officer's perception of the event and whether he had a reasonable basis to *suspect* that

a traffic violation had occurred. (*Brierton, supra,* 130 Cal.App.4th at p. 510.) Accordingly, we conclude that substantial evidence supports the finding of a reasonable suspicion of a violation of Vehicle Code section 22108.

Regarding the additional basis for the traffic stop, defendant contends that there is insufficient evidence to support a finding that the officer reasonably suspected the windshield was "in such a defective condition as to impair [codefendant's] vision" in violation of Vehicle Code section 26710. First, defendant argues that the officer noticed the crack only "after improperly pursuing the vehicle for a violation which did not justify a stop." Because we conclude that the officer had the reasonable suspicion necessary to make a stop when he saw the Volkswagen make two right turns without a taillight blinker, we reject any argument that he was improperly following the Volkswagen.

Next, defendant contends in effect that the officer's testimony was insufficient evidence of a reasonable suspicion that the crack impaired the codefendant's vision because the officer could not recall details about the size and location of the crack. During the hearing, the officer testified that he could see a "large crack running through the front windshield" at a distance of about two to three vehicle lengths behind the Volkswagen. The trial court concluded that because he could see the crack "through the rear window of [codefendant's] vehicle" and "from quite a distance," it was reasonable to suspect that such a crack could impair codefendant's vision. The trial court need not require a description of the exact dimensions of the crack in order to find substantial evidence of a reasonable suspicion of a potential Vehicle Code section 26710 violation.

It could reasonably infer that the officer had such reasonable suspicion simply based on the officer's description of the crack as "large."

The traffic stop was lawful.

3. *The search*

Defendant contends that the trial court erred in ruling that the officer had probable cause to search codefendant's car. Because the trial court's finding that the officer smelled marijuana "once the vehicle was stopped and [he] contacted the [codefendant]," is supported by substantial evidence and because California precedent supports a finding of probable cause to search a vehicle based on the detection of a marijuana odor coming from the vehicle, we disagree with defendant and affirm the trial court's ruling.

Under the automobile exception to the warrant requirement, a law enforcement officer may search a vehicle when he or she has probable cause to believe it contains contraband or evidence of a crime. (*Robey v. Superior Court* (2013) 56 Cal.4th 1218, 1225 (*Robey*); *People v. Waxler* (2014) 224 Cal.App.4th 712, 719-721(*Waxler*) [probable cause exists "'where the known facts and circumstances are sufficient to warrant a [person] of reasonable prudence in the belief that contraband . . . will be found'"], citing *Ornelas v. United States* (1996) 517 U.S. 690, 696 (*Ornelas*).) Despite the changes to its criminal status, marijuana constitutes contraband for purposes of probable cause, even where a defendant has a medical prescription for marijuana. (*Waxler*, at pp. 719-721; *Strasburg*, *supra*, 148 Cap.App.4th at pp. 1059-1060 [officer had probable cause to search car after smelling marijuana, even though defendant had medical marijuana

prescription and could lawfully possess amount of marijuana greater than that officer initially found].) Thus, we will affirm a ruling that there was probable cause to search a vehicle if substantial evidence supports a finding that the officer reasonably believes there is contraband inside the vehicle.

Here, the officer testified that he smelled the odor of marijuana coming from the passenger side window as codefendant handed over his documents. He testified that, based on his training and experience—which includes 75 to 100 traffic stops involving marijuana—he is able to identify the smell of marijuana. He further testified that his detection of a marijuana odor was the exact reason he asked codefendant to come back for questioning once he had issued the citation.

After observing the officer's demeanor and hearing testimony as to his observations, training, and experience, the trial court found that his testimony was credible, namely that "once the vehicle was stopped and [he] contacted the [codefendant]," the officer "identified the odor of marijuana emanating from the car." We uphold this factual finding as supported by substantial evidence.

Defendant contends that the detection of a marijuana odor, alone, is insufficient to establish probable cause. California case law states otherwise. The Supreme Court has held that the smell of marijuana coming from a vehicle is sufficient to furnish probable cause for a search. There, two police officers stopped the defendants' car for speeding and one of the officers, "who testified to a long familiarity with the smell of marijuana," detected the smell coming from inside the car when the passenger rolled down the

window. (*People v. Cook* (1975) 13 Cal.3d 663, 666-668 (*Cook*), overruled in part on other grounds by *People v. Doolin* (2009) 45 Cal.4th 390, 420-421.) The officers found over five pounds of marijuana when they searched the car and the trunk. (*Cook*, at p. 668.) The defendants challenged the trial court's denial of their motion to suppress arguing, as defendant does here, "that an odor of marijuana detected by police officers when they stopped the automobile . . . did not constitute probable cause . . . ." (*Id.* at pp. 666-667.) The court rejected this argument and held that the odor of marijuana established "[p]robable cause to believe that the car contained contraband," i.e., marijuana, and that "the officers would have been remiss in their duties had they not undertaken an immediate search." (*Id.* at pp. 669-670.) In support of this holding, the court cited to *People v. Gale* (1973) 9 Cal.3d 788 (*Gale*), superseded by statute on other grounds as stated in *People v. Johnson* (1984) 162 Cal.App.3d 1003, where the court stated the "proposition that an odor of marijuana may establish probable cause to believe that contraband is present . . . ." (*Cook*, at p. 669, fn. 5.)

The holding in *Cook* is dispositive of the probable cause issue in this case. Here, just as in *Cook*, the trial court found that the police officer smelled the odor of marijuana coming from the passenger side of the vehicle soon after conducting a traffic stop. (*Cook*, *supra*, 13 Cal.3d at pp. 669-670.) Thus, we hold that the trial court did not err when it concluded that the officer's detection of a marijuana odor was sufficient to furnish probable cause to search the Volkswagen for contraband.

More recently, in *Strasburg*, the court held that even where a defendant has a marijuana prescription, the detection of a marijuana odor coming from a vehicle constitutes probable cause to search that vehicle. (*Strasburg*, *supra*, 148 Cap.App.4th at p. 1059.) Defendant attacks this interpretation of *Strasburg* and argues that the case actually holds that smell alone is insufficient to furnish probable cause—that an additional basis is necessary, such as a visual observation of marijuana. We disagree.

In *Strasburg*, "The operative issue [was] whether [the officer] had probable cause to search defendant's car *at the moment he smelled the odor of marijuana*, at the outset of his encounter with defendant . . . ." (*Strasburg, supra*, 148 Cal.App.4th at p. 1058, italics added.) The court found the officer "had probable cause to search defendant's car for marijuana after he smelled the odor of marijuana." (*Id*. at p. 1059.) The court did not hold that a visual detection of marijuana was necessary to establish probable cause. Rather, the officer's observation of a bag of marijuana in defendant's car only served to make certain what the officer had probable cause to suspect upon smelling marijuana—that there was contraband in the car. (*Id.* at p. 1059.)

Defendant similarly misconstrues the holding of *Waxler*. There, the court held that the officer had probable cause to search after he simultaneously smelled and saw marijuana in defendant's truck. (*Waxler*, *supra*, 224 Cal.App.4th at pp. 716, 721.) While these facts do involve smell plus sight, the court in no way held that smell alone is insufficient to establish probable cause. To the contrary, the court reiterated "the 'settled proposition that the smell of marijuana can establish probable cause . . . .' " (*Id.* at

p. 719, citing *Robey, supra*, 56 Cal.4th at p. 1254 (conc. opn. of Liu, J.); see also *Waxler*, at p. 720 ["Appellant concedes the odor of marijuana justifies the warrantless search of an automobile under *Strasburg* . . . ."].) It is unambiguous that, in California, the detection of a marijuana odor is sufficient to establish probable cause.[3]

Defendant next argues that the officer lacked probable cause to search the Volkswagen because he was unable to say whether the odor was that of fresh or burnt marijuana. Defendant contends that this distinction is relevant because it would determine the violation a person was suspected of committing: "the smell of fresh marijuana may lead an officer to investigate the quantity of marijuana present . . . whereas the smell of burnt marijuana may suggest driving under the influence." This argument misses the mark.

For purposes of probable cause, when an officer suspects contraband is present in a vehicle, the officer is not required to pinpoint which code section is being violated by the presence of such contraband. Rather, the facts and circumstances that the officer observes must be " 'sufficient to warrant a [person] of reasonable prudence in the belief that contraband . . . will be found.' " (*Waxler, supra*, 224 Cal.App.4th at p. 718, citing *Ornelas, supra*, 517 U.S. at p. 696.) Put another way, the probable cause requirement is not violation specific, the belief that marijuana (contraband) is present is sufficient. (*Waxler, supra*, 224 Cal.App.4th at p. 721 ["a law enforcement officer may conduct a warrantless search of a vehicle pursuant to the automobile exception when the officer has

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[3] We note here that defendant concedes this is the case in her reply brief.

probable cause *to believe the vehicle contains marijuana*, which is contraband"] (italics added).)

Defendant cites a number of cases for the proposition that the type of odor is determinative to the existence of probable cause. While we do not disagree that the type of odor can affect an officer's belief of what type of crime has potentially been committed, the cases defendant cites do not hold that the existence of probable cause hinges on the type of odor. For example, defendant cites to *Cook*, where, although the officer there smelled fresh marijuana, the court's holding on probable cause did not depend on that detail. (*Cook*, *supra*, 13 Cal.3d at p. 670, fn. 5 ["probable cause to believe contraband is present may be grounded upon the detection of the distinctive odor of marijuana"].) The remaining cases similarly fail to support defendant's argument. (See *Waxler*, *supra*, 224 Cal.App.4th at p. 720 [existence of probable cause did not depend on fact that odor detected was that of burnt marijuana—"officer had probable cause to search the defendant's car when [he] smelled marijuana"]; *Gale*, *supra*, 9 Cal.3d at p. 794 [stating the general proposition that the odor of marijuana may establish " 'probable cause to believe . . . that contraband may be present' "][4]; *People v. Fitzpatrick* (1970) 3 Cal.App.3d 824, 826-827 [the type of marijuana odor was not dispositive to the probable

[4] The portion of *Gale* defendant relies on for support (" 'strong odor of fresh marijuana' gave the officer 'probable cause to believe . . . that contraband may be present' ") does not relate to the search of a vehicle, but instead to the legality of defendant's arrest on suspicion of marijuana possession on his person. (*Gale*, *supra*, 9 Cal.3d at p. 794.) In any event, no part of *Gale* can be taken to mean that the existence of probable cause depends on the type of odor.

cause holding—the officer had probable cause to suspect the defendant had fresh marijuana on his person *even though* the odor detected was that of burnt marijuana].)

Here, the trial court's conclusion that the officer reasonably suspected marijuana was present in the Volkswagen was based on his testimony about his experience identifying marijuana odor. It is irrelevant whether the odor was that of fresh or burnt marijuana because, under the case law, both types of odors can lead an officer to reasonably suspect that marijuana is present. Thus, we reject this argument.

Lastly, defendant asserts the officer's testimony that he smelled marijuana coming from the passenger side of the Volkswagen was a dishonest "after-the-fact justification for the search." Defendant argues that the officer "lacked any suspicion of contraband until [codefendant] acknowledged possessing a marijuana pipe." Thus, defendant argues, when the officer called codefendant back for questioning he lacked any suspicion of contraband and was in effect engaging in an unlawful fishing expedition to find evidence of such contraband. Defendant contends that a detention may lawfully last only as long as it takes to issue the citation and, accordingly, once the officer handed codefendant the citation and told him that he was "done with everything," the purpose of the stop had been resolved and any further detention was unlawful. We disagree.

The law is that " 'if the police have probable cause to justify a warrantless seizure of an automobile . . . they may conduct either an immediate or a delayed search of the vehicle.' " (*People v. Superior Court* (*Nasmeh*) (2007) 151 Cal.App.4th 85, 101; see *Strasburg, supra,* 148 Cal.App.4th at p. 1058-1059 [because the officer had "probable

cause to search from the outset" the court "need not review the grounds for detention"].) Here, the officer had probable cause to search the vehicle when he smelled marijuana coming from the passenger side of the Volkswagen. This was at an "early stage" of the stop, *before* the officer called codefendant back to question him. (See *Strasburg, supra*, 148 Cal.App.4th at p. 1060 ["Given the probable cause here, the officer is entitled to continue to search and investigate . . . ."].) Defendant's contention that the officer "lacked any suspicion of contraband until [codefendant] acknowledged possessing a marijuana pipe" reduces to an argument that the officer's testimony did not constitute substantial evidence that the officer smelled marijuana coming from the Volkswagen upon his first contact with codefendant. The argument fails because the testimony of a single witness who is believed by the trier of fact is substantial evidence unless the testimony is physically impossible or inherently improbable. (See, e.g., *People v. Elliott* (2012) 53 Cal.4th 535, 585.) The court believed the officer's testimony, and because the testimony is not physically impossible (the officer was close enough to the car to smell an odor coming from it) or inherently improbable (marijuana was in the car, as well as marijuana pipes), the testimony is substantial evidence that the officer smelled the marijuana upon contact with codefendant.

Accordingly, we uphold the trial court's ruling that the stop and search were lawful.[5]

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[5] Defendant argues that the exclusionary rule applies here and, thus, the evidence obtained during the search should be suppressed. (See *Wong Sun v. United States* (1963) 371 U.S. 471, 487-488 [under the exclusionary rule, evidence obtained as a result of

[footnote continued on next page]

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

HOLLENHORST
J.

McKINSTER
J.

[footnote continued from previous page]
unlawful police conduct is tainted and may be suppressed].) Because we conclude that the stop, detention, and search were lawful and defendant's Fourth Amendment rights were not violated, *Wong Sun* does not apply.